TAXATION—MEMBERSHIP IN STOCK EXCHANGE TAXABLE PROPERTY.—Plaintiff owned a membership in the New York Stock Exchange. A tax was levied upon this membership in Ohio, the State of his domicil. The plaintiff filed a suit for an injunction against the county auditor to enjoin the collection of the tax, alleging the infringement of rights under the due process of law clause of the Federal Constitution. The question of the capability of the membership being taxed as property, was raised. *Held*, injunction denied. *Anderson* v. *Durr et al.*, 42 Sup. Ct. 15 (1921).

It has been repeatedly held that a membership in a stock exchange is personal property which passes to the assignee in bankruptcy, but subject to prior claims of members of the exchange who are creditors of the bankrupt, and all other limitations legally imposed by the articles of the association, and this even though the membership partakes of the nature of a mere license or privilege. *Hyde* v. *Wood*, 94 U. S. 523 (1876); *Sparhawk* v. *Yerkes*, 142 U. S. 1 (1891); *Page* v. *Edmunds*, 187 U. S. 596 (1903); *Powell* v. *Waldron*, 89 N. Y. 328, 42 Am. Rep. 301 (1882). Membership in corporations organized for business purposes is property which passes to the assignee in bankruptcy. *In re Warden*, 10 Fed. 275 (1882); *In re Werden*, 15 Fed. 789 (1883). A bankrupt has even been forced by order of court to sell his seat for the benefit of creditors. *In re Ketchum*, 1 Fed. 840 (1880). A seat is not absolute property but property subject to all of the rules and conditions of the association, so that expulsion for proper cause may forfeit the proceeds derived from a sale of the membership. *Belton* v. *Hatch*, 109 N. Y. 593, 17 N. E. 225, 4 Am. St. Rep. 495 (1888). It has been held to be property capable of being subjected to a mortgage lien and that the lien could be foreclosed, and the seat sold, subject to the association rules; or to be applied as other property to the payment of the owner's debts. *Clute* v. *Loveland*, 68 Cal. 254, 9 Pac. 133 (1885); *Habenicht* v. *Lissak*, 78 Cal. 351, 20 Pac. 874, 12 Am. St. Rep. 63, 5 L. R. A. 713 (1889). The ownership of such a seat has been considered a part of a bankrupt's general business assets and, as such, liable to execution for his debts. *Grocers' Bank* v. *Murphy*, 10 Daly (N. Y.) 168, 60 How. Pr. 426 (1881). And even if the terms of the association forbid transfers except to members. *Ritterband* v. *Baggett*, 42 N. Y. Super. Ct. (10 Jones & S.) 556, 4 Abb. N. C. 67 (1877). Other forms of intangible property, such as patent rights and copy-rights, are subjected to the payment of debts by bill in equity, though not allowed by mere execution of judgment. *Stephens* v. *Cady*, 14 How. (U. S.) 528 (1852); *Ager* v. *Murray*, 105 U. S. 126 (1881); *Millar* v. *Taylor*, 4 Burr. 2303, 98 Eng. Rep. R. 201 (1769).

Some jurisdictions deny that a seat is property in the eye of the law, holding that it is not the subject of execution in any form and cannot be levied on for the satisfaction of debts by legal process because lacking the essential elements of property. *Barclay* v. *Smith*, 107 Ill. 349, 47 Am. Rep. 437 (1883); *Thompson* v. *Adams*, 93 Pa. St. 55 (1879); *Pancoast* v. *Gowen*, 93 Pa. St. 66 (1879).

Since the main test for property is its liability to levy and execution, it seems that the instant case stands with the majority view and that such a seat is properly the subject of taxation, being treated as personal property, and being without a fixed situs has a taxable situs at the domicil of the owner under the well-known principle of *mobilia sequuntur personam*.